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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,747	01/12/2004	leon Chen	EQUUS-074A	9631

7590 04/20/2005

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EXAMINER

KING, ANITA M

ART UNIT PAPER NUMBER

3632

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/755,747

Applicant(s)

CHEN, IEON

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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This is the second office action for application number 10/755,747, Automotive Gauge Mounting Bracket with Frictional Fit Apertures, filed on January 12, 2004.

Drawings

The drawings were received on January 18, 2005. These drawings are approved.

Claim Objections

Claims 3-6 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 3-6 currently depend from canceled claim 2, however, for examination purposes, the examiner will assume that these claims are intended to depend from claim 1.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 8 recites the limitation "each one of the apertures" in line 1. There is insufficient antecedent basis for this limitation in the claim. The limitation previously cited in claim 1 is drawn to "at least one gauge receiving aperture".

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5, and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,507,706 to Trexler, Jr. in view of U.S. Patent 5,702,076 to Humber. Trexler discloses an automotive gauge mounting structure (10) engageable to an automotive vehicle interior, the structure comprising: a bracket (20); at least one gauge receiving aperture (22) formed in the bracket; a gauge (12); wherein the aperture is generally circularly shaped; wherein each one of the apertures is of generally equivalent size, and wherein the bracket includes three gauge receiving apertures formed therein. Trexler discloses the claimed invention except for the limitation of the aperture defining a plurality of displaceable segments. Humber teaches a insulator (10) for insertion into an aperture of a plate, the insulator including at least one receiving aperture (22) formed in the bracket, the aperture defining a plurality of displaceable segments (18) and recesses extending therebetween, the segments being displaceable in response to insertion of a cylindrical object into the aperture for friction-fit engagement, wherein the recesses define a plurality of outer arcuate recesses and the displaceable segment defines a plurality of displaceable inner arcuate segments

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arcuate recesses, and wherein the segments are equidistantly spaced around the aperture. It would have been obvious to one having ordinary skill in the art to have included the insulator as taught by Humber for the purpose of providing a means holding a cylindrical object such as a gauge rigidly in position and to accommodate different sized objects.

Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trexler combined with Humber and in further view of Longo. Trexler in view of Humber disclose the claimed invention except for the limitation of recesses being provided with a series of radial cuts. Longo teaches that it is known to have a bracket (22) having a receiving aperture including a plurality of displaceable segments and recesses extending therebetween, wherein the recesses are provided with a series of radial cuts, the cuts defining additional displaceable segments therebetween, and wherein the radial cuts are of generally equal length. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the bracket in Trexler combined with Humber to have included the recesses as taught by Longo for the purpose of providing an alternative, mechanically equivalent arrangement for rigidly supporting a cylindrical object such as a gauge within the aperture to prevent unwanted detachment of the gauge from the bracket.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Trexler combined with Humber and in further view of U.S. Patent 3,603,551 to Peterson. Trexler combined with Humber discloses the claimed invention except for the limitation of the recesses defining a cross-shape aperture. Peterson teaches that it is known to

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have a bracket including at least one receiving aperture formed in the bracket, the aperture defining a plurality of displaceable segments and recesses extending therebetween, the segments being displaceable in response to insertion of a cylindrical object, and the recesses define a cross-shape aperture, having a plurality of displaceable interior segments. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the bracket in Trexler combined with Humber to have included the recesses as taught by Peterson for the purpose of providing an alternative, mechanically equivalent arrangement for rigidly supporting a cylindrical object such as a gauge within the aperture to prevent unwanted detachment of the gauge from the bracket.

Response to Arguments

Applicant's arguments filed January 18, 2005 have been fully considered but they are not persuasive. The rejections stand.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Humber is used to teach an alternative means for attaching an object to a bracket having an aperture, it

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is generally known in the art that friction-fitting is an alternative, mechanically equivalent means interlocking two articles. The rationale here is to teach an alternative means for attaching an object to a bracket through an aperture.

In response to applicant's argument that Trexler and Humber are nonanalogous, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both references teach a cylindrical device and a bracket containing an aperture for engaging the cylindrical device.

In response to applicant's argument that Humber is used for mounting a pipe to a metal wall stud, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., overcoming accessibility limitations in mounting instrument gauges) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification,

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limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that knowledge that is generally available to one of ordinary skill in the art would not lead to a suggestion or motivation to combine Trexler with Humber, note in applicant's remarks cited case law on page 7, lines 1-2, it states that suggestion or motivation can stem from either in the references or in knowledge generally available to one of ordinary skill in the art, the engagement between the gauge and the aperture in Trexler is generally known to be equivalent to the engagement taught by Humber as an alternative means of engaging.

Conclusion


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Friday. Note starting April 8, 2005 the examiner may be reached at (571) 272-6817.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156 and after April 8, 2005 can be reached on (571) 272-6815. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anita M. King
Primary Examiner
Art Unit 3632

April 6, 2005